

September 21, 2017

OUR FILE NO.  
99999.00001

**VIA E-MAIL**

Matthew Knudson  
Interim Administrative Staff  
Antelope Valley Watermaster  
mknudson@avek.org

Re: Antelope Valley Watermaster Board—  
Response to Questions Directed to Potential Counsel

Dear Mr. Knudson:

The following is a response to the questions of the Watermaster Board:

1. Questions on “Conflicts”
  - a. Question for those who participated in negotiating the stipulation that led to the Judgment (as appropriate):
    - i. You were associated with a party in the adjudication that has rights on Exhibit 4 of the Judgment - has that shaped the way you may interpret the Judgment?
    - ii. You were associated with a party in the adjudication that has rights on Exhibit 3 of the Judgment - has that shaped the way you may interpret the Judgment?

Response to 1a:

I have represented the City of Lancaster in the Adjudication since its inception in 1999, and the Rosamond Community Services District since 2012. Rosamond Community Services District is an Exhibit 3 party. Lancaster is neither an Exhibit 3 nor Exhibit 4 party. Specifically, with respect to Lancaster, it has historically produced overlying water rights of 500 acre-feet a year for its National Soccer Complex. To effectuate the global settlement, and in furtherance of balancing the Basin, Lancaster agreed that it would stop producing groundwater and instead utilize recycled water when it becomes available to meet the reasonable and beneficial uses of the National Soccer Complex.

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My (i) involvement in this Adjudication since 1999, (ii) representation of both an Exhibit 3 party (Rosamond) and overlying public agency (Lancaster), and (iii) involvement as one of a select group of attorneys that initially began crafting and developing the ultimate Judgment and physical solution, provides me with unique insight and background regarding the Judgment. While my involvement in this matter since 1999 has undoubtedly provided me with special knowledge, the Judgment is a document that was a negotiated "contract" ultimately approved and adopted by the Court. As the Watermaster Board is now aware, certain provisions of the Judgment require legal interpretation. My 18 year experience with the Adjudication process provides me with particular knowledge on these issues. If selected as Watermaster counsel, I will interpret the Judgment consistent with its plain language and the spirit intent of all parties to the Judgment -- -- without bias toward any party.

- b. Question for those who have not been involved in the Adjudication Litigation:
  - i. The Judgment was developed based on a negotiated stipulation among most of the parties to the Judgment - how will you evaluate the Judgment absent knowledge about those negotiations?

Response to 1b: NOT APPLICABLE

2. Questions on "Logistics"

- a. What backup capability do you have on your staff for key roles of the Watermaster counsel?

Response to 2a:

The Watermaster Board is hiring a lawyer, not a law firm. Accordingly, it would be my intent to be directly involved in all Watermaster legal activities and be available to address all matters as directed by the Board. Having said this, the lawyers in my firm have worked together for many years and the full resources of my firm will be available to the Watermaster to the extent required. We have capable attorneys in my office that could be utilized when/if needed.

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b. How will you address travel requirements?

Response to 2b:

I intend to bill my time for travel/driving, but would attempt to schedule Watermaster related telephone calls while on the road. All my existing clients currently pay for travel time. I will not bill for travel expenses to and from Watermaster meetings, lodging or food.

c. How will you address succession planning for this position?

Response to 2c:

I was listening to the September 18, 2017 Board meeting when this topic was discussed and someone initially posed the question as to what are counsel's plans if counsel were to "retire or die." I plan on doing neither for the foreseeable future. More seriously, I'm in excellent physical shape, and in my intent is to work for a minimum of 15 years, likely more, as I enjoy what I do.

3. Questions on "Approach"

a. How do you think that information about the negotiations that led to the final Judgment should be used in interpreting the Judgment?

Response to 3a:

Counsel for the Watermaster must have access to all the facts and provide a dispassionate analysis of the legal question presented. In interpreting the Judgment, my first goal would be to look to the "four corners" of the Judgment and provide advice based upon the unambiguous language of the document. As the Board is aware, however, provisions of the Judgment in some instances do require interpretation -- -- and the facts and circumstances of the negotiations may be relevant to that analysis. While specific discussions as to what transpired in any formal mediation must remain confidential as a matter of law, information and facts regarding settlement negotiations outside the context of formal mediation are relevant and may be considered when interpreting a document under certain scenarios. And, of course, under the Judgment, the ultimate decision-maker regarding interpretation lies with the court.

b. Do you see trying to build consensus between parties that have disputes on the interpretation of the Judgment as part of the Watermaster counsel role?

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- i. If so, what ideas do you have about how you could help build that consensus?

Response to 3b:

I would view my role as providing my best advice regardless of the "consensus" view. The Watermaster Board should not expect its counsel to favor or disfavor interpretations based on political acceptance. I will provide my legal analysis based upon the analysis of the objective facts. Having said this, and if asked to negotiate a resolution of a matter that is not pure legal analysis, the obvious goal is to build consensus and seek resolution that is acceptable to all. During the course of the Adjudication, I demonstrated my ability to negotiate and reach consensus with all parties, including overlying interests, Public Water Suppliers, the federal government, and the small pumper's class. I believe I have earned the respect of all these competing interests over the course of the Adjudication.

- c. What role do you think that the Watermaster counsel should play in hearings before the court:
  - i. To defend a challenged Watermaster decision?
  - ii. To argue on a disputed interpretation of the Judgment that is not related to a Watermaster decision?
  - iii. On which issues (if any) do you think the Watermaster and Watermaster counsel should make arguments to the Court, and which issues should the Watermaster and Watermaster counsel leave to the Parties to argue?

Response to 3c:

This will likely be a case-by-case analysis -- -- one that will be made in consultation with the Watermaster Board. Generally speaking, I would anticipate Watermaster counsel will actively participate in any direct challenge to a Watermaster Board decision. Similarly, I would envision that Watermaster counsel actively participate in any court proceedings that impact or relate to the process and duties of the Watermaster. The Judgment further provides that the Watermaster "shall" bring an action or motion as is necessary to enjoin any conduct prohibited by the Judgment -- -- the Watermaster counsel will necessarily play an active/lead role in any such effort. While I would not anticipate Watermaster counsel take an active role in any dispute that is purely between the parties, such disputes will need to be considered on a case-by-case basis and evaluated to determine whether any such action taken by a party could impact the Watermaster.

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- d. Can you describe your approach and experience regarding enforcement activities on behalf of the Watermaster (e.g., collection of unpaid assessments, enforcement of injunctions under the Judgment, failure to comply with reporting requirements)?

Response to 3d:

I, and other members of my firm, have extensive litigation experience, including "enforcement" activities. We have pursued major code enforcement actions on behalf of public agency clients over the years. My prior firm, Stradling Yocca Carlson & Rauth, has one of the largest municipal finance/bond practices in the state. As the former head of the public law litigation department at that firm, my department was responsible for monitoring delinquent taxes and assessments (e.g., Mello Roos taxes) and initiating foreclosure proceedings when necessary. Historically, I have also filed actions on behalf of water district clients to enjoin unauthorized and/or illegal pumping. Our approach is always to attempt resolution of any matter short of litigation, but then to quickly and aggressively pursue litigation if resolution cannot be reached.

- e. How will you approach coordination with the Watermaster Engineer and the Watermaster staff?

Response to 3e:

The Watermaster Board is the client of Watermaster counsel. The attorney-client relationship is governed by state law and the Rules of Professional Conduct adopted by the State Bar. As Watermaster counsel, I would support the efforts of the Watermaster Engineer and staff to implement the policies and direction of the Watermaster Board. As Watermaster counsel, I would respond to requests of the Watermaster Board, Watermaster Engineer and staff -- -- all as directed by the Watermaster Board. As Watermaster counsel, I would view my role as addressing how something can get done, rather than why something cannot.

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I look forward to meeting with the Board on September 27, 2017.

Best regards,



Douglas J. Evertz of  
MURPHY & EVERTZ LLP

DJE/mm